

Before the
Federal Communications Commission
Washington, DC 20554



In the Matter of)

Request for Review of the)
Decision of the)
Universal Service Administrator by)

Dickenson County Public Schools)
Clintwood, Virginia)

Federal-State Joint Board on)
Universal Service)

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-239477

CC Docket No. 96-45

CC Docket No. 97-21 ✓

ORDER

Adopted: May 21, 2002

Released: May 22, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Request for Review filed by Dickenson County Public Schools (Dickenson), Clintwood, Virginia.¹ Dickenson seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying requests for Funding Year 4 discounts under the schools and libraries universal service mechanism due to competitive bidding violations.² For the reasons set forth below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that an eligible school, library, or consortium applying for funding must, in most cases, seek competitive bids for the products and services to be funded.⁴

¹ Letter from David C. Yates, Dickenson County Public Schools, to Federal Communications Commission, filed March 5, 2002 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(a).

To comply with this competitive bid requirement, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470 in which the applicant lists the services for which it seeks discounts.⁵ The Administrator then posts the FCC Form 470 on its web site for all potential competing service providers to review.⁶

3. The FCC Form 470 describes the applicant's planned service requirements, as well as other information regarding the applicant and its competitive bidding process that may be relevant to the preparation of bids.⁷ The FCC Form 470 must be completed by the entity that will negotiate with prospective service providers and must be signed by the person authorized to order the requested services on behalf of the applicant.⁸ The signatory must make several certifications, under oath, relating to the eligibility of the applicant and the applicant's ability to make use of the services requested.⁹ The FCC Form 470 also requires that the applicant name a person whom prospective service providers may contact for additional information (contact person).¹⁰ The contact person should be able to answer questions regarding the information included on the FCC Form 470 and the services requested by the applicant, including how to obtain a copy of the applicant's request for proposal (RFP), if the applicant has prepared one.¹¹

4. After the FCC Form 470 is posted on the Administrator's website, the applicant must wait at least 28 days before entering into an agreement for services and submitting an FCC Form 471, which requests support for eligible services.¹² After receiving an FCC Form 471, SLD issues a Funding Commitment Decision Letter granting or denying the applicant's requests.

5. In *Mastermind Internet Services, Inc.*, the Commission held that, where an FCC Form 470 lists a contact person who is an employee or representative of a service provider, the

⁵ 47 C.F.R. §§ 504(b)(1), (b)(2); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 470).

⁶ 47 C.F.R. § 54.504(b).

⁷ 47 C.F.R. § 54.504(b). In addition to a description of the services that the applicant plans to receive, the Form 470 requests that the applicant provide information about the number of students that attend the schools that will receive support, the number of buildings for which the applicant seeks services eligible for support, and other information relevant to a service provider's determination of services appropriate to include in its bid proposal. See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470) (October 2000) (FCC Form 470 Instructions).

⁸ FCC Form 470 Instructions at 2-3, 16.

⁹ 47 C.F.R. § 54.504(b)(2).

¹⁰ FCC Form 470 Instructions at 7.

¹¹ FCC Form 470 Instructions at 7.

¹² 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

FCC Form 470 is defective.¹³ The Commission observed that the “contact person exerts great influence over an applicant’s competitive bidding process by controlling the dissemination of information regarding the services requested.”¹⁴ On this basis, the Commission found that “when an applicant delegates that power to an entity that also will participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process.”¹⁵ It concluded that “a violation of the Commission’s competitive bidding requirements has occurred where a service provider that is listed as the contact person on the FCC Form 470 also participates in the competitive bidding process as a bidder.”¹⁶ In such cases, SLD must deny any funding request based on that FCC Form 470.¹⁷

6. At issue here are two funding requests seeking telecommunications services, Funding Request Numbers (FRNs) 566553 and 566643.¹⁸ In its Funding Commitment Decision Letter, SLD denied these requests on the grounds that the “[a]ssociated [FCC] Form 470 contains service provider contact information.”¹⁹ SLD stated that a “[c]ompetitive bidding violation occurs when [a service provider] associated with [the FCC] Form 470 participates in competitive bidding process as a bidder.”²⁰

7. In particular, FRNs 566553 and 566643 relied on FCC Form 470 App. No. 136320000298445 (Dickenson Form 470).²¹ The Dickenson Form 470 listed, as a contact person, Tim Lovelace, an employee of the Thomas Educational Consulting, Inc. (TECI).²² TECI also participated in the competitive bidding process pursuant to the Dickenson Form 470,

¹³ *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SPIN-143006149, CC Docket No. 96-45, FCC 00-167, para. 9 (2000) (*Mastermind*).

¹⁴ *Id.* at para. 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at para. 9 (“to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied).

¹⁸ Request for Review at 1; FCC Form 470, Dickenson County School District, filed January 12, 2001 (Dickenson Form 471), at 3-4.

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to David Yates, Dickenson County School District, dated September 14, 2001 (Funding Commitment Decision Letter), at 6.

²⁰ *Id.*

²¹ FCC Form 470, Dickenson County School District, posted October 10, 2000 (Dickenson Form 470).

²² Request for Review at 1; Dickenson Form 470.

as evidenced by the fact that FRN 566900, which also relied on the Dickenson Form 470, sought discounts on internal connections to be supplied by TECI.²³

8. In its Request for Review, Dickenson concedes that its FCC Form 470 contact person was an employee of a service provider that participated in the competitive bidding process.²⁴ Thus, Dickenson does not dispute that its FCC Form 470 is invalid under *Mastermind*. It argues, however, that SLD interpreted *Mastermind* too broadly and that *Mastermind* should be revisited.²⁵ Specifically, Dickenson argues that the Dickenson Form 470 should not be found invalid in connection with telecommunications requests because TECI, the service provider associated with the Dickenson Form 470, only bid for the internal connections services and was not legally capable of bidding on telecommunications requests because it is not a common carrier, and because there is allegedly no other evidence of fraud or abuse.²⁶

9. We disagree with Dickenson's assertion that SLD interpreted *Mastermind* too broadly in holding the entire FCC Form 470 invalid. The Commission plainly stated that an FCC Form 470 that suffers a *Mastermind* violation is "defective" and that requests for support that rely upon it "must be denied."²⁷ The Common Carrier Bureau has also previously confirmed that, under *Mastermind*, "any funding request based on [the defective] Form 470 must be denied."²⁸ As to Dickenson's request that *Mastermind* be revisited, it is well established that divisions and bureaus of the Commission are bound by a decision of the full Commission.²⁹ We therefore have no authority to overrule or revisit the Commission's decision in *Mastermind*.

10. Dickenson alternatively requests that we permit Dickenson to rely on a different FCC Form 470 that allegedly supports FRN 566553, its local telephone telecommunications funding requests.³⁰ Dickenson cites to an FCC Form 470 posted in Funding Year 1 by the Virginia Department of Information Technology, establishing a pre-existing "master contract"

²³ Dickenson Form 471 at 4. FRN 566900 was also denied, but on the grounds that Dickenson was not eligible to receive discounts on internal connections in Funding Year 4. Dickenson has not appealed this determination.

²⁴ Request for Review at 1.

²⁵ Request for Review at 3.

²⁶ *Id.* at 3-4.

²⁷ *Mastermind*, para. 9.

²⁸ *Request for Review by College Prep School of America, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-127852, 127862, and 127866, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 1738, para. 13 (Com. Car. Bur. 2002).

²⁹ *Voice Stream PCS I License*, 16 FCC Rcd 7584, para. 8 (Enf. Bur. 2001); *see also Jelks v. Federal Communications Commission*, 146 F.3d 878, 881 (1998) (a subordinate body such as a Division cannot alter a policy set by the Commission itself).


³⁰ Request for Review at 4.

for Virginia public schools for local telecommunications service from Verizon (DIT Form 470).³¹

11. We need not decide whether it would be appropriate to permit an applicant whose cited FCC Form 470 violated *Mastermind* to seek to rely on a different FCC Form 470 because the DIT Form 470 would, in any case, fail to support FRN 566553. As reported in the Dickenson Form 471, FRN 566553 seeks support for month-to-month local telephone service.³² Month-to-month services received in one funding year cannot be support by reference to an FCC Form 470 posted in a previous year.³³ As a result, Dickenson could not, in any case, support its Funding Year 4 request for month-to-month service by reliance on the Funding Year 1 DIT Form 470. We therefore deny Dickenson's request to substitute a new FCC Form 470.

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Dickenson County Public Schools, Clintwood, Virginia, on March 5, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireless Competition Bureau

³¹ See Request for Review; see also DIT website, <<http://www.dit.state.va.us/news/NEWS2000/000925usf.cfm>>; FCC Form 470, Department of Information Technology, Universal Service Control Number (USCN) 91512000073811, posted March 12, 1998 (DIT Form 470).

³² Dickenson Form 471 at 3.

³³ *Request for Review by Chickasaw Regional Library System, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142924, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 683, para. 7 (Com. Car. Bur. 2002) ("An applicant seeking funding for month-to-month services from a provider must submit the service for competitive bidding even if it is a continuation of a service that was bid in the previous year.").

